IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8318 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UPENDRA @ DEVGAN KANTILAL NIRMAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8318 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 6.8.2001 passed by the Commissioner of

Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one registered offence against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonimous witnesses recorded on 1.8.2001 and 2.8.2001, which have been verified on 4.8.2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal activities detrimental to public health and public order and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that the satisfaction recorded by the detaining authority for the need for immediate exercise of powers under Sec.3 of the PASA Act, is baseless. The detenu is already in Police remand and his likelihood of moving a bail application is without any basis and therefore the petition may be allowed.

4. Learned AGP Mr. S.S. Patel has opposed this petition.

5. Having regard to the contentions raised before this Court, it is clear that the detenu was in judicial custody when the order was passed. The detaining authority observed that he may apply for bail and on getting bail, may pursue his illegal activities. This is without any basis and is not permissible under the law. Getting bailed out is different than applying for bail. The detenu was in Police remand and therefore, the order would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, wherein it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that likelihood of detenu moving an application for bail is

not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 6th August, 2001 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. Detenu Upendra @ Devgan Kantilal Nirmal be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas